

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 703 Liability of Spaceflight Entities

SPONSOR(S): Civil Justice Subcommittee; Goodson

TIED BILLS: None **IDEN./SIM. BILLS:** SB 652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	14 Y, 0 N	Tecler	Kruse
2) Civil Justice Subcommittee	12 Y, 0 N, As CS	Billmeier	Bond
3) Economic Affairs Committee	11 Y, 0 N	Tecler	Tinker

SUMMARY ANALYSIS

Some states offer liability protection for commercial human spaceflights as an incentive measure to attract or retain commercial spaceflight activity in their state. Florida law provides liability protection to spaceflight entities in the event of an injury to or death of a participant engaging in spaceflight activities provided the required warning is given to and signed by the participant. Unless reenacted by the Legislature, the law will sunset on October 2, 2018. The bill repeals the sunset date of October 2, 2018 and extends liability protection to certain space-related manufacturers and suppliers, which may have the effect of encouraging private sector economic activity.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

In order to encourage growth in the commercial spaceflight industry, Congress enacted the Commercial Space Launch Amendments Act of 2004 (“the Act”).¹ The Act establishes a licensing process for spaceflight entities.² The Act also establishes informed consent requirements for commercial human spaceflight and provides certain protections to licensed entities that engage in commercial human spaceflight.

The provisions of the Act include a “fly at your own risk” clause that allows a licensed entity to carry spaceflight participants only if the licensed entity informs participants in writing about the risks of the launch and reentry, including the safety record of the launch or reentry vehicle.³ After being fully informed, participants must provide written consent.⁴ The Act does not require spaceflight participants to waive liability for any non-governmental entity.

The Act also includes licensed entities in a temporary indemnification and insurance arrangement that requires the licensed entity to purchase insurance, but provides government indemnification up to \$1.5 billion beyond the insurance cap.⁵ This has the effect of shielding licensed entities from high insurance costs due to the risk of a catastrophic event.

In general, states offer liability protection for commercial human spaceflights as an incentive measure to attract or retain commercial spaceflight activity in their state. In addition to Florida, Virginia and New Mexico provide liability protection for entities engaging in commercial human spaceflight.⁶ Last year, the Virginia General Assembly repealed the sunset date of the Virginia law.⁷ The New Mexico law provides a sunset date of July 1, 2018.

Florida Liability Protection

Section 331.501, F.S., provides that a spaceflight entity⁸ is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities⁹ provided the required warning is given to and signed by the participant. A participant or participant's representative may not recover damages from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities. The limitation on liability is in addition to any other limitation of legal liability that might otherwise be provided by law. Further, immunity provided under current law does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:¹⁰

- commits gross negligence or willful or wanton disregard for the safety of the participant;
- has actual knowledge or reasonably should have known of a dangerous condition; or
- intentionally injures the participant.

To receive the immunity provided under current law, the spaceflight entity must have each participant sign a required warning statement.¹¹ The warning must contain, at a minimum, the following statement:

¹ 49 U.S.C. ss. 70101-70305.

² See generally 49 U.S.C. s. 70105

³ 49 U.S.C. s. 70105(b)(5).

⁴ 49 U.S.C. s. 70105(b)(5)(C).

⁵ 49 U.S.C. ss. 70112-13. \$500 million in coverage for third party claims. \$100 million for property damage claims by the United States.

⁶ Va. Code ss. 8.01-227.8 through 8.01-227.10. NMSA 1978, ss. 41-14-1 through 41-14-4.

⁷ HB 21 repealed the sunset date of July 1, 2013.

⁸ Section 331.501(1)(c), F.S. defines “spaceflight entity” as a public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities.

⁹ As defined in s. 331.501(1)(b), F.S., the term “spaceflight activities” means launch services or reentry services as those terms are defined in 49 U.S.C. s. 70102.

¹⁰ Section 331.501(2)(b), F.S.

¹¹ Section 331.501(3)(a), F.S.

WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Injuries caused by inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.¹²

Unless reenacted by the Legislature, the provisions of this section will sunset on October 2, 2018.¹³

Changes Made By the Bill

The bill amends s. 331.501, F.S., by repealing the sunset date of October 2, 2018.

The bill amends the definition of "spaceflight entity" to include any manufacturer or supplier of components, services, or vehicles that have been reviewed by the Federal Aviation Administration as part of the licensing process. If the bill becomes law, existing liability protections will be extended to include certain space-related manufacturers or suppliers.

This bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends s. 331.501, F.S., revising the definition of spaceflight entity and repealing the sunset date.

Section 2: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By removing the sunset provision, the bill may have the effect of encouraging private sector economic activity.

¹² Section 331.501(3)(b), F.S.

¹³ Section 331.501(4), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered this bill on March 23, 2011, and adopted an amendment to extend liability protections to any manufacturer or supplier of components, services, or vehicles that have been reviewed by the Federal Aviation Administration as part of the licensing process. The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted amendment.